

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:06CR227

UNITED STATES OF AMERICA

vs.

KELLY DENISE MICHAEL

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ORDER

THIS MATTER is before the Court on Defendant's motion for leave to file notice of appeal out of time, filed March 23, 2009.

The Rules of Appellate Procedure provide that in a criminal case,

[u]pon a finding of excusable neglect or good cause, the district court may . . . extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed [by this Rule].

Fed. R. App. P. 4(b)(4).

On February 11, 2009, this Court denied Defendant's motion for a reduction of sentence pursuant to 18 U.S.C. § 3582 based on the recent amendment to the Sentencing Guidelines for crack cocaine offenses. **See Order, filed February 11, 2009.** A notice of appeal from that Order was

due to be filed on or before February 26, 2009.¹ Therefore, Defendant's notice of appeal filed March 9, 2009, is untimely.

Defendant advises that she did not receive notice from her attorney that her motion had been denied nor did she receive the Court's Order until after the appeal period expired. For the reasons stated in the motion, the Court finds the Defendant has shown excusable neglect for the late filing of the appeal and the time for doing so shall be extended.

IT IS, THEREFORE, ORDERED that the Defendant's motion for leave to file notice of appeal out of time is **ALLOWED**, and the time for filing an appeal is extended for 30 days from February 26, 2009.

Signed: April 1, 2009



Lacy H. Thornburg
United States District Judge



¹ See Fed. R. Crim. P. 45(a)(2) ("Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days.").